

REMARKS

The Final Office Action mailed April 8, 2009 (hereinafter, "Office Action") has been reviewed and the Examiner's comments considered. Claims 1-60 are pending in this application. Claims 28-60 are withdrawn. Claim 1 is amended herein, support for which is found in at least paragraphs [0136], [0140], and [0144] of Instant Application Publication US 2007/0106231. Applicants submit that no new matter or issues have been introduced.

Claim Rejections - 35 U.S.C. § 102

Claims 1-13 and 15 -27 stand rejected under 35 U.S.C. § 102(b) as being unpatentable over USPN 5,697,907 to Gaba (hereinafter, "Gaba"). Applicants respectfully traverse these rejections.

Independent claim 1 recites, *inter alia*, a "binding member including at least one drag inducing member such that the at least one drag inducing member engages the needle during slidable receipt of the needle to create a drag force with the needle, the drag force and blocking member causing rotation of the binding member relative to a longitudinal axis of the needle such that the binding surfaces engage the needle to prevent slidable movement of the needle in the extended position of the shield, the binding member further including a needle communicating surface extending therefrom such that the needle communicating surface is engageable with the needle to prevent rotation of the binding member."

Gaba shows and described a safety catheter the includes a retainer 348 that includes "a hook 354 extending out of the housing 344 to engage and hold the catheter to the housing. A spring 352 urges the retainer 348 to the rear of the housing." (Gaba, col. 5, ll. 52-55, emphasis added). As can be seen in Gaba, FIG. 14 (reproduced below), when the point 135 of the needle 132 clears the front hole 364 the spring 352 (not frictional force) "urge" the retainer 348 movement. While drag will occur wherever the needle 132 contacts the front hole 364 or the rear hole 362 while the needle 132 is moving, the design of Gaba does not harness this drag to cause "rotation of the binding member relative to a longitudinal axis of the needle such that the binding surfaces engage the needle

to prevent slidable movement of the needle in the extended position of the shield” as required by claim 1. Differently, Gaba shows and describes a spring 352 that causes the retainer 348 to move, i.e., to urge the retainer 348. (Gaba, col. 5, ll. 54-55).

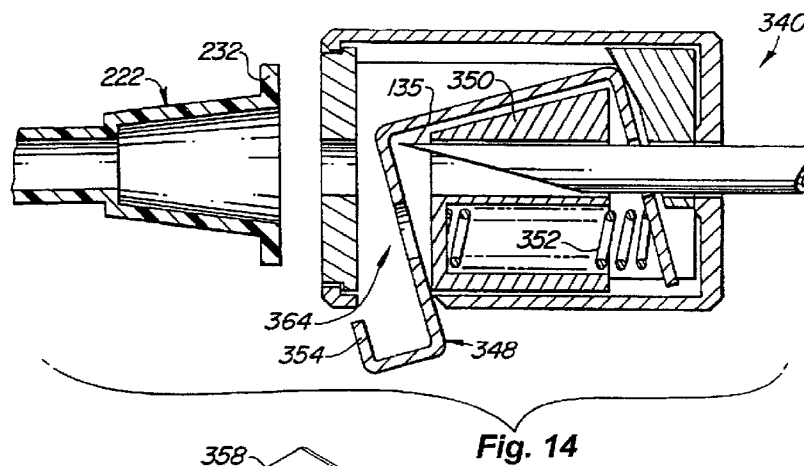


Fig. 14

According to the MPEP, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).” (MPEP § 2131). Gaba does not provide any showing or description of the claimed drag force and shield causing rotation of the binding member using drag forces, and therefore Gaba does not anticipate independent claim 1.

Accordingly, in view of the above, independent claim 1 is patentable over Gaba as it does not show or describe at least a “binding member including at least one drag inducing member . . . to create a drag force with the needle, causing rotation of the binding member.” Dependent claims 2-13 and 15-27 are patentable because they depend from a patentable independent claim, and also because they recite features not shown or described by the cited art. Therefore, Applicants request favorable reconsideration and withdrawal of the rejections under 35 U.S.C. § 102.

Claim Rejections - 35 U.S.C. § 103

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Gaba in further view of USPN 4,978,344 to Dombrowski et al. (hereinafter “Dombrowski”). Applicants

respectfully traverse this rejection. Without conceding the propriety of the asserted combination, or the assertions made in the Office Action with respect to the allegedly disclosed subject matter, Applicants submit that claim 14 depends from patentable independent claim 1 and is therefore patentable. Accordingly, Applicants request favorable reconsideration and withdrawal of this rejection under 35 U.S.C. § 103.

Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

It is noted that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between the cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein should not be construed to prejudice or foreclose future consideration by Applicants of additional or alternative distinctions between the claims of the present application and the references cited by the Examiner and/or the merits of additional or alternative arguments.

In the event that the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. **50-2191**, under Order No. 101674.0028P. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: July 7, 2009

Respectfully submitted,

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